

AGENDA

Livestock Facility Siting Review Board

May 30, 2006
DATCP Boardroom

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|-------|--|
| 9:30 | Welcome by Secretary Nilsestuen |
| 9:40 | Appointment of temporary chair |
| 9:45 | Introductions |
| 10:00 | Presentation and discussion of Livestock Siting Law and Rule
<i>Presented by Dave Jelinski, Director, Land and Water Resources Bureau</i> |
| 10:50 | BREAK |
| 11:00 | Presentation and discussion on Roles and Responsibilities of Board and Staff
<i>Presented by Richard Castelnovo, Chief, Resource Planning Section</i> |
| 11:45 | LUNCH |
| 12:30 | Review and discussion of proposed bylaws
<i>Led by Cheryl Daniels</i> |
| 1:30 | BREAK |
| 1:45 | Continue discussion of proposed bylaws |
| 2:30 | Administrative housekeeping <ul style="list-style-type: none">▪ Filing expense reports▪ Mailing procedures▪ Set next meeting dates |
| 3:00 | Adjourn |

Open Meeting Notice

Meeting: Livestock Facility Siting Review Board.

Date & Time: Tuesday, May 30, 2006, 9:30 am to 3:00 p.m.

Location: WI DATCP, 2811 Agriculture Drive, Madison, WI

Division: Agricultural Resource Management

Agenda: Call to order; Welcome; Appointment of Temporary Chair; Introductions; Presentation on Livestock Facility Siting Law and Rule; Presentation on Role and Responsibilities of Board and Staff; Lunch; Review and Discuss Proposed Bylaws; Administrative Housekeeping; Adjourn

To find out more about the meeting or hearing, or to request copies of documents which may have been prepared by the DATCP or to request documents to be used in connection with the meeting/hearing, write to the listed division at PO Box 8911, Madison, WI 53708 or call 608/224-4786 or by TDD line 608/224-5058.

For the hearing or visually impaired, non-English speaking, or for those with other personal circumstances which might make communication at the meeting/hearing difficult, this agency will, to the maximum extent possible, provide aids including an interpreter, or a non-English, large print or taped version of hearing documents. Please contact the address or phone number listed above as soon as possible.

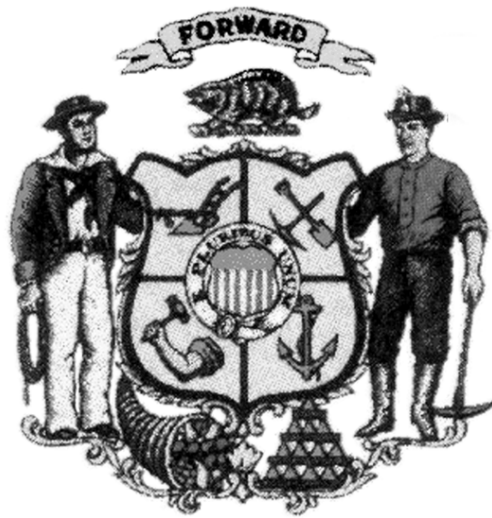
This agency, to the maximum extent possible, holds all meetings in facilities that are physically accessible to persons with disabilities. For questions about accessibility, contact the meeting's sponsoring division.

Posting date: May 15, 2006

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WISCONSIN
Livestock Facility Siting Review Board

BYLAWS



Adopted _____, 2006

*Wisconsin Department of Agriculture, Trade
and Consumer Protection
P.O. Box 8911
Madison, WI 53708-8911
(608)224-4622*

I. PURPOSE

The Wisconsin Livestock Facility Siting Review Board (the board), which is attached to the Department of Agriculture, Trade and Consumer Protection (DATCP), is responsible for determining whether challenges to local livestock facility siting decisions are valid. Specific authorities and duties are listed in Appendix A.

II. MEMBERS

A. Members

As required by s. 15.135(1)(a) of the Wisconsin Statutes, the board consists of:

- 1) A member representing the interests of towns, selected from a list of names submitted by the Wisconsin Towns Association;
- 2) A member representing the interests of counties, selected from a list of names submitted by the Wisconsin Counties Association;
- 3) A member representing environmental interests, selected from a list of names submitted by environmental organizations;
- 4) A member representing livestock farming interests, selected from a list of names submitted by statewide agricultural organizations.
- 5) Three other members

The members shall be nominated by the secretary of agriculture, trade, and consumer protection, and with the advice and consent of the senate appointed, for 5-year terms.

B. Vacancies

In the event of a vacancy of one of the four designated member seats, the secretary of agriculture, trade, and consumer protection will solicit names from the appropriate organization or organizations and choose a member from among the nominees. If one of the at-large member seats is vacant, the secretary of agriculture, trade, and consumer protection will nominate a member. All nominations are subject to the advice and consent of the senate.

C. Terms

The terms of members are for 5 years and shall expire on May 1. Terms of the initial Board members were designated in 2003 Wisconsin Act 235, Section 4. Nonstatutory Provisions (2).

D. Attendance

If a member is absent at three consecutive meetings without good reasons, as determined by the board, the board shall bring the matter to the secretary's attention.

E. Oath of Office

Each member shall take and file the official oath prior to assuming office. [s. 15.07(7), Stats.]

III. OFFICERS

At its first meeting in each odd-numbered year, the board shall elect a chair, vice-chair and secretary, each of whom may be re-elected to succeed himself or herself. [s. 15.07(2), Stats.] If an office becomes vacant, the Board may hold a special election at any regularly scheduled board meeting.

IV. AUTHORITIES AND RESPONSIBILITIES

A. Adjudication

The board has quasi-adjudicatory authority to perform the following functions:

1. Review challenges filed by aggrieved parties of decisions to approve or deny and application for local approval of new or expanded livestock facility.
2. Determine if a challenged is valid based on whether the decision of the political subdivision incorrectly applied the state standards under S. 93.90 (2) (a) that are applicable to the livestock facility siting or expansion or violated S. 93.90 (3).
3. Affirm the decision of the political subdivision or reverse that decision based on whether or not the challenge is valid.
4. Prepare policy recommendations in connection with individual decisions, and direct transmission of the decisions as necessary.
5. Seek enforcement of its decision in a court of law, if appropriate.

A detailed description of the adjudicatory procedures is provided in Appendix A.

B. Board Management

The board has policy and rule making authority to perform the following functions:

1. Establish how the Board will conduct its business, including procedures to review cases.
2. Establish how others interact with the Board.
3. Evaluate and make recommendations regarding the operation and management of the Board.
4. Pursue formal rules if needed.

V. DECISION MAKING PROCESSES

Functioning in its quasi-adjudicatory capacity, the board will use the procedures outlined in Appendix A.

DATCP will support the Board as follows:

1. Provision of legal and other assistance to explain statutory and rule requirements.
2. Management of case files and communications about cases, including the use of docket sheets to track activity and ensure prompt, proper, and timely compliance with the review procedure.
3. Preparation and issuance of required notices and orders.
4. Scheduling and coordination board meetings.
5. Provision of legal assistance as required to resolve cases, including preparation of a final decision.
6. Provision of expert assistance, as needed, on water quality issues.

VI. MEETING PROCEDURES

A. Schedule and Place of Meetings

1. Meetings will be scheduled monthly and may be cancelled, if not needed.
2. Special meetings may be called by the chair at anytime, as required to take action on cases.
3. Meetings will generally be held at DATCP, in Madison, or at other appropriate locations. The board may also hold meetings by conference call.
4. All meetings shall be noticed in accordance with the open meeting laws, Chapter 19, Stats.

B. Agendas

1) Individual Meeting Agendas

The agenda shall be prepared by the staff of the DATCP Land and Water Resources Bureau in consultation with the board attorney, and coordinated with the chair of the board, at least 14 calendar days prior to the next scheduled meeting. The agenda and materials will be mailed to members at least 10 days prior to the next regularly scheduled meeting, except in the case of special or emergency meetings.

The agenda shall include:

- a) approval of minutes of the previous meetings(s),
- b) approval of agenda and additions or changes,
- c) oral arguments, if any,
- d) actions as authorized by statutes,
- e) other business authorized by law, and
- f) future meetings scheduled.

C. Minutes

Minutes of each meeting shall be taken by DATCP staff and signed by the secretary of the board. Minutes shall record all board actions. Minutes shall be mailed to each member. Minutes and all other records of the board shall be retained as required by law.

D. Board Materials

1) Review

Materials related to board decisions on individual cases shall be prepared by the board attorney.

Informational materials or materials related to board decisions on matters of policy shall be prepared by DATCP staff or the board attorney.

2) Distribution

All board materials will be distributed to the board under the signature of the board attorney or livestock facility siting review board staff.

Materials shall be mailed to the board at least 10 days prior to the board meeting, and sooner if possible. However, upon permission of the board chair, staff may distribute certain materials at board meetings to supplement presentations to the board, when appropriate.

All press releases prepared by staff pertaining to board issues shall be reviewed and approved by the board chair.

E. Conduct of Meetings

1) Conduct of Meetings

The chair or, in the absence of the chair the vice chair or, in the absence of both, the secretary, or in the absence of all three, any member chosen by the members present, shall call the meetings of the board to order and shall act as chair of the meetings.

The board secretary shall act as secretary of all meetings of the board. In the absence of the secretary, the presiding officer may appoint any member present to act as secretary of the meeting. The secretary shall direct the department to prepare minutes of all board meetings. Any subject matter regarding procedure not covered by these bylaws will be covered by *The Sturgis Standard Code of Parliamentary Procedure*. Meetings shall be conducted in accordance with Wisconsin's open meeting law.

2) Unanimous Consent Without Meeting

Except as prohibited by law or by these bylaws, action may be taken by telephone poll or mail ballot of the members without a meeting if all board members at the time so consent. Any action so taken by the board shall be ratified by the board at the next regular or special meeting of the board.

3) Manner of Acting

Except as otherwise expressly provided in these bylaws, action shall be taken by the board upon a vote of a majority of the members present at a meeting and the same shall be the action of the board. The voting on all matters at a meeting for which a roll call vote is requested shall be by yeas and nays and the yeas and nays shall be entered upon the minutes of the meeting. In the case of a tie vote, the motion will fail. Each member is allowed one vote on all motions concerning business of the board.

4) Quorum

Four board members shall constitute a quorum and no formal business may be transacted unless a quorum is present.

5. Conflict of Interest

If a member recognizes that his or her own participation in a particular discussion or vote represents a conflict of interest, that member shall so state publicly and abstain from that discussion or vote.

VII COMPENSATION AND EXPENSES

Board members who are not employees of state agencies are eligible to receive \$25.00 per diem plus expenses "incurred in the performance of their duties." [s. 15.07(5), Stats.]. The following policy defines the duties of members of the board, the performance of which establishes eligibility for per diem and expenses.

A. No Prior Approval Required

Board members will receive per diem and expenses for attending official meetings of the Livestock Facility Siting Review Board;

B. Prior Approval Required

Board members will receive per diem and expenses for attending the following meetings or activities if prior approval has been obtained from the board chair, with the concurrence of the ARM administrator.

Meetings and activities for which prior approval is required are:

- 1) Attendance at ATCP Board meeting where presence is requested as part of a report on board activities
- 2) Other public appearances on behalf of the board.

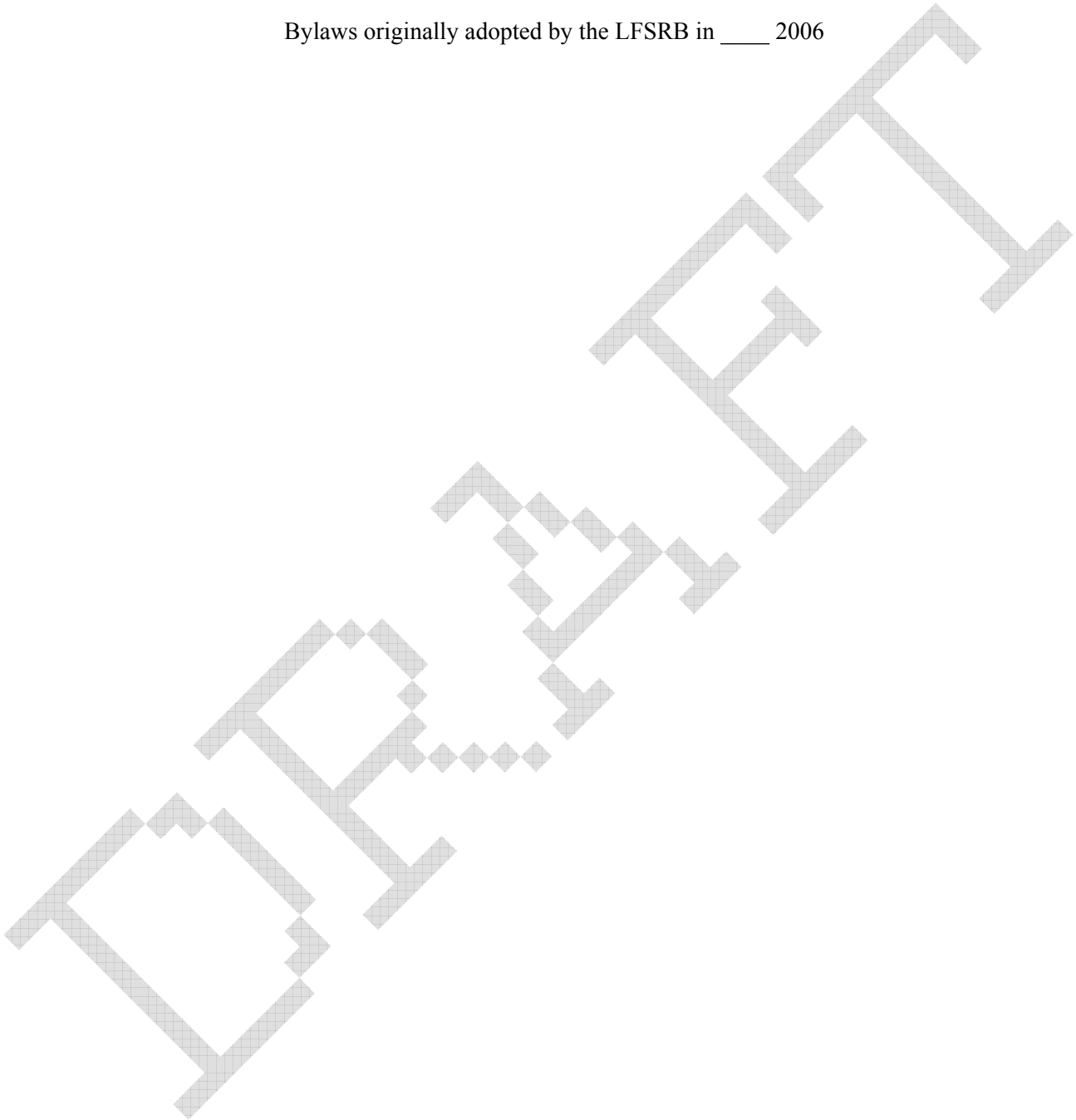
VIII. REVIEW OF AND AMENDMENTS TO THE BYLAWS

Bylaws shall be reviewed at the December meeting of even numbered years. These bylaws may be altered, amended or repealed and new bylaws may be adopted by an affirmative vote of four members present at any regular meeting provided that notice of each proposed change hereof or addition hereto has been delivered personally, or mailed to each member at such address as the member shall have designated to the board, not less than 10 days prior to the time of meeting at which the proposed change or addition is to be considered.

IX. STAFF ASSISTANCE

DATCP shall provide staff to assist the board in performing its statutory duties. [ss. 93.90 Stats.]

Bylaws originally adopted by the LFSRB in ____ 2006



Appendix A
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I. Procedures

A. Initiation of proceeding

1. Request for review

An aggrieved party, as defined in sec. 93.90, Stats., may initiate a review of proceeding by filing an appropriate document that includes all of the following:

- (a) The name and address of the aggrieved party, and the name and address and telephone number of its principal representative, if any.
- (b) A clear and concise statement that the party filing the request meets the definition of aggrieved, s. 93.90(5)(a), Stats
- (c) The names and addresses of the political subdivision, including the local administrative body that issued the decision, whose decision is being challenged.
- (d) A clear and concise statement of the item or items which the aggrieved party is challenging.

The board may require a party to provide additional information to meet the requirements of (a)-(d) above. A request is not complete and deemed filed unless it meets the requirements of (a)-(d) above.

2. Docket

Upon receipt of a request for review, the board will assign a docket number and create a docket sheet. Each party shall be provided notice and shall place the assigned docket number on all papers subsequently filed with the board.

3. Notification to political subdivision

Upon receiving a complete request for review, the board shall notify the political subdivision of the request. The notice shall be mailed by certified mail, return receipt requested or by personal delivery, with a signed affidavit to the clerk of each affected political subdivision. The political subdivision shall provide a certified copy of the record as defined in ATCP 50.sub. (4) to the board within 30 days after the day on which it receives the notice.

Note: ATCP 51.36 provides identifies the following as part of a complete written record of its decision-making related to an application under s. ATCP 51.30:

- (1) The application under s. ATCP 51.30(1), and all subsequent additions or amendments to the application.
- (2) A copy of any notice under s. ATCP 51.30(5), and copies of any other notices or correspondence that the political subdivision issues in relation to the application.
- (3) A record of any public hearing related to the application. The record may be in the form of an electronic recording, a transcript prepared from an electronic recording, or a direct transcript prepared by a court reporter or stenographer. The record shall also include any documents or evidence submitted by hearing participants.
- (4) Copies of any correspondence or evidentiary material that the political subdivision considered in relation to the application.
- (5) Minutes of any board or committee meeting held to consider or act on the application.
- (6) The written decision required under s. ATCP 51.34(3).
- (7) Other documents that the political subdivision prepared to document its decision or decision-making process.
- (8) A copy of any local ordinance cited in the decision.

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A political subdivision that does not comply with the notice within 30 days shall be sent a second notice. The board may enforce this requirement using available legal remedies.

4. Time to make its decision

The 60 day requirement for making a final decision shall not start until the board has received a certified copy of the record of decision-making. The board will make a dated entry on the docket sheet when the political subdivision has filed a certified copy of the record.

B. Pre-decision administrative procedures

1. Board Attorney

The attorney assigned to the board shall be provided a copy of the request for review and the certified record.

After receipt of the request and record, the board attorney will schedule the matter for consideration by the board at its next available meeting. The board attorney will arrange for the parties to receive notification about board review of the request.

The board attorney may make any other arrangements to expedite or facilitate review of a case including arrangements for the board to consult with the department of agriculture, trade and consumer protection or the department of natural resources concerning the application of the requirements related to water quality.

The board attorney shall not open the record to receive additional evidence except to receive evidence on jurisdictional questions.

2. Requirement for communications and papers.

All communications and papers related to a case before the board shall clearly show the title of the proceeding and the docket number.

All communications, documents and papers submitted to the board during any point in a proceeding, shall be submitted to the board at this address:

Livestock Facility Siting Board
c/o Wisconsin Department of Agriculture, Trade and Consumer Protection
Agricultural Resource Management Division
Bureau of Land and Water Resources
P.O. Box 8911
Madison, WI 53708-8911
Fax: (608) 224-4615

Except as otherwise provided in these rules, any document submitted to the board, prior to, during, or after hearing shall be submitted with seven (7) copies in addition to the original. All matters submitted to the board shall be printed, typed or otherwise legibly duplicated. The original of each document submitted shall be signed by an attorney or representative of record for the party, or in case of a party not so represented, by the party itself, or by an officer of the party if it is a corporation or an unincorporated association.

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Notices of hearings, recommended decisions, orders, and other process or papers shall be submitted to parties residing or located in the state by certified mail.

All communications and papers submitted to the board shall be served on all parties not represented by counsel or upon their agents designated by them or by law. Submission upon such counsel or representative shall constitute submission upon the party.

Proof of submission shall be submitted to the board only if the submission is challenged. In such a case, the party whose submission is challenged shall submit a copy of the return post office receipt to the board as proof.

3. Statement of Position

At least two weeks before the board considers a matter, a party (including the political subdivision) may file a statement of position that explains why the challenge is or is not valid.

C. Decision making process

1. Summary disposition

At any time during review, a case may be recommended for summary dismissal if a request for review is filed by a party who is not “aggrieved” or if the party does not challenge a matter within the board’s jurisdiction.

Note: S. 93.90(5)(b) provides that an aggrieved person may challenge the decision of a political subdivision on an application for approval on the grounds that the political subdivision incorrectly applied the state standards under S. 93.90 (2) (a) that are applicable to the livestock facility siting or expansion or violated s. 93.90 (3), by requesting the board to review the decision.

An aggrieved person is a person who applied for approval of a livestock facility siting or expansion, a person who lives within two miles of the proposed livestock facility, or a person who owns land within two miles of the proposed livestock facility.

2. Board consideration

The board shall be provided the certified record at least 2 weeks in advance of the date of the board’s deliberation.

3. Rights of Parties

Any party shall have the right to appear by counsel or by any other representative to present at board meeting. No party has a right to submit additional documentary evidence or provide testimony from any witnesses.

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4. Record of hearings or proceedings before board

A record of proceedings in open session shall be made using a tape recorder or other device. Minutes shall be prepared to record board actions.

5. Standard of review

The board shall make its decision without deference to the decision of the political subdivision and shall base its decision only on the evidence in the record.

6. Deliberation

The board may convene in closed session for the purpose of “[d]eliberating concerning a case which was the subject of a quasi-judicial hearing before the board.” A closed session will only convene upon proper notice and compliance with procedures. As a matter of policy, the board will vote in open session in regard to any case, unless doing so would compromise the need for the closed session.

7. Final Decision

The board will issue a final written decision. If the board's final decision is appealed in circuit court, the board chair or designee shall certify the board's decision and record to the circuit court.

8. Extension of Time.

Any time limit prescribed in s. 93.90(5) may be extended for good cause shown. Extensions may be granted even if a party has not requested an extension. Any such request to extend any time limit shall be in writing and be received at least 3 working days before the expiration of such time limit. Each party of record will be provided written notice of any extension.

D. Rules of Conduct

1. Communication by and to Board

No member of the board shall communicate, directly or indirectly, with any party or other person outside of the formal proceedings of the board regarding any issue related to the request for review without first consulting with board chair and then providing notice and opportunity for all parties to participate.

No person having knowledge that a request for an appeal hearing has been filed and no party to an appeal hearing shall communicate, directly or indirectly, with any member of the board outside of the review process.

A board member who receives an ex parte communication in violation of this section shall place on the case record all written communications received, all written responses made, a memorandum stating the substance of all oral communications received and responses made, and the identity of each person from whom the Board member received an ex parte communication. The board member shall advise all parties that these matters have been placed on the record. Upon request made within ten days after notice of the ex parte communication, any party or other person involved in such ex parte communication desiring to rebut the communication shall be allowed to place a written rebuttal statement on the record.

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If necessary to eliminate the effect of an ex parte communication received in violation of this section, a board member who receives the communication may be disqualified from participation in the review process.

2. Disqualification and Recusal

A board member shall be subject to disqualification for bias, prejudice, interest, or any other good cause. Immediately upon becoming aware of facts or circumstances supporting disqualification, a party shall file with the Chair of the board a motion of disqualification against any member of the board. Upon a party's motion for disqualification, the member of the board against whom the motion was filed shall consider the motion and determine whether to disqualify himself or herself. A determination not to disqualify oneself may be overturned by a favorable vote of at least three members of the board. A person who is disqualified cannot participate in or be present for any aspect of a board's decision.

board members, on their own initiative, shall recuse themselves whenever they determine they have irreconcilable conflicts of interest or the appearance of such conflicts of interest. A member of the board shall accomplish recusal by filing a written notice of recusal with the Chair of the board. Such written notice shall include sufficient details to enable the Chair to understand the basis for recusal.